

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE

ECOLAB Inc., and NALCO COMPANY, LLC  
d/b/a Nalco Water, an Ecolab Company and/or  
Nalco Water,

Plaintiffs,

v.

ANTHONY RIDLEY, and CHEMTREAT,  
INC.,

Defendants.

Case No. 1:22-cv-00050-TRM-SKL

Hon. Travis McDonough

Magistrate Judge Susan K. Lee

**CHEMTREAT’S LR7.1(D) BRIEF ON SEALING**

Pursuant to Local Rule 7.1(d), ChemTreat submits this supplemental brief to apprise the Court of developments occurring after briefing closed regarding the Consolidated Motion To File Under Seal (Doc. 272) (“Consolidated Sealing Motion”). Specifically, Plaintiffs subsequently filed in the public record information they previously contended was required to be sealed as trade secret information.

On June 17, 2023, after the parties had fully briefed the Consolidated Sealing Motion, Plaintiffs filed a motion for case-terminating sanctions against Defendants Ridley and ChemTreat pursuant to Rule 37(e)(2) (Doc. 292). In support of their motion, Plaintiffs filed in the public record the Expert Report of Laurence D. Lieb (“Lieb Report”) with Exhibits A through H. *See* Doc. 293-6. Plaintiffs did not redact the Lieb Report, although in connection with the Consolidated Sealing Motion they had previously required ChemTreat to file it under seal and asserted in their brief in support of sealing that certain information in the Lieb Report was required to be redacted “to protect this information from unwarranted disclosure to Plaintiffs’ competitors.” Doc. 284 at 11. Plaintiffs likewise did not seek in their June 17 motion to redact or otherwise seal Exhibits D

through H to the Lieb Report. Those exhibits contain the allegedly trade secret information—“tens of thousands of file names that provide information on Plaintiffs’ customers and prospective customers, services provided for those customers, and other confidential business information” (Doc. 284 at 11)—from the Digital Guardian data loss prevention report that Plaintiffs required ChemTreat to file under seal provisionally, as follows:

- Exhibit D contains the file paths for “9,741 files and folders” (Doc. 293-6, ¶ 27);
- Exhibit E contains the file paths for “149 files and folders” (Doc. 293-6, ¶ 28)
- Exhibit F contains the file paths for “185 files and folders” (Doc. 293-6, ¶ 29);
- Exhibit G contains the file paths for “1,798 files and folders” (Doc. 293-6, ¶ 30); and
- Exhibit H contains the file paths for “4,891 files and folders” (Doc. 293-6, ¶ 31).

Plaintiffs previously asserted, again in connection with the Consolidated Sealing Motion, that the file paths from the DLP report constituted “a rich source of competitive information on Plaintiffs’ business activities for those in the same field,” such that “[r]edaction of the file names and data in which the file name is replicated in part or in full would be essential to ensure that information about clients and other confidential business information is protected.” Doc. 284 at 11. ChemTreat understands that, collectively, the 16,764 file paths Plaintiffs voluntarily disclosed by filing Exhibits D through H of the Lieb Report in the public record represent the entirety of the file paths from the DLP report for which Plaintiffs claim trade secret status.

Given Plaintiffs’ public filing (again<sup>1</sup>) of the Lieb Report and now also of Exhibits D through H to that Report, Plaintiffs cannot claim that they have a “valid, good faith argument” (Doc. 246 at 8) for seeking sealing of any information in the Lieb Report (Exhibit 1 to Doc. 257; filed under seal at Doc. 275-8) or the DLP report (Exhibit 7 to Doc. 257; filed manually under seal at Doc. 270). Relatedly, Plaintiffs can no longer claim that they have a “valid, good faith

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<sup>1</sup> As ChemTreat previously noted (Doc. 291 at 6), Plaintiffs filed the entire Lieb Report in the public record on April 24, 2023. *See* Doc. 225-14.

argument” (Doc. 246 at 8) for seeking sealing of the list of allegedly “exfiltrated” files attached to the report of Dana Trexler (Exhibit 3 to Doc. 266; filed manually under seal at Doc. 270), as the file paths in that document are all included in the file paths that Plaintiffs voluntarily disclosed by filing Exhibits D through H to the Lieb Report in the public record.

ChemTreat submits that these subsequent public disclosures by Plaintiffs bear directly on the merits of the Consolidated Sealing Motion, confirming that the information at issue in that Motion should not be required to be filed under seal.

DATED: June 20, 2023

Respectfully submitted,

/s/ Troy C. Homesley

Vidya Atre Mirmira (admitted *pro hac vice*)

William T. Burke (admitted *pro hac vice*)

Juli Ann Lund (admitted *pro hac vice*)

Troy C. Homesley (admitted *pro hac vice*)

WILLIAMS & CONNOLLY LLP

680 Maine Ave. SW

Washington, DC 20024

Telephone: (202) 434-5000

Facsimile: (202) 434-5029

E-mail: vmirmira@wc.com

E-mail: wburke@wc.com

E-mail: jlund@wc.com

E-mail: thomesley@wc.com

W. Scott Sims

Michael R. O’Neill

SIMS FUNK PLC

3322 West End Ave. #200

Nashville, TN 37203

Telephone: (615) 425-7432

Facsimile: (615) 649-8565

E-mail: ssims@simfunk.com

E-mail: moneill@simsfunk.com

*Attorneys for Defendant ChemTreat, Inc.*

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and exact copy of the foregoing was served via the Court's CM/ECF system on June 20, 2023, upon the following:

J. Gregory Grisham, BPR No. 013810  
FISHER & PHILLIPS LLP  
1715 Aaron Brenner Drive, Suite 312  
Memphis, Tennessee 38120  
[ggrisham@fisherphillips.com](mailto:ggrisham@fisherphillips.com)

David J. Walton (*pro hac vice*)  
Edward G. Winsman (*pro hac vice*)  
Kathleen Laubenstein (*pro hac vice*)  
FISHER & PHILLIPS LLP  
Two Logan Square, 12th Floor  
100 N. 18th Street  
Philadelphia, PA 19103  
[dwalton@fisherphillips.com](mailto:dwalton@fisherphillips.com)  
[ewinsman@fisherphillips.com](mailto:ewinsman@fisherphillips.com)  
[klaubenstein@fisherphillips.com](mailto:klaubenstein@fisherphillips.com)

Pavneet Uppal (*pro hac vice*)  
FISHER & PHILLIPS LLP  
3200 North Central Avenue, Suite 1550  
Phoenix, AZ 85012  
[puppal@fisherphillips.com](mailto:puppal@fisherphillips.com)

James Michael Honeycutt (*pro hac vice*)  
FISHER & PHILLIPS LLP  
227 West Trade Street, Suite 2020  
Charlotte, NC 28202  
[jhoneycutt@fisherphillips.com](mailto:jhoneycutt@fisherphillips.com)

*Attorneys for Plaintiffs*

Lance W. Pope, BPR No. 025054  
Jeremy M. Cothorn, BPR No. 027166  
Patrick, Beard, Schulman & Jacoway, P.C.  
537 Market Street, Suite 300  
Chattanooga, TN 37402  
(423) 756-7117 – phone  
(423) 267-5032 – fax  
[lpope@pbsjlaw.com](mailto:lpope@pbsjlaw.com)  
[jcothorn@pbsjlaw.com](mailto:jcothorn@pbsjlaw.com)

*Attorneys for Anthony Ridley*

/s/ Troy C. Homesley  
Troy C. Homesley